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1948. File No. O Trusts/48

Legal DEPARTMENT

A BRANCH

A/MS

Subject.— Opinions regarding Trusts

P.J.K

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Std. Sectt. Slip 24 B c.

177-8

Office of the R.L.A.

It is alleged in the Manager's letter at page 3 ante: "Finally in April 1947, I found a man to run the school with the necessary staff. The Director of Public Instruction was informed of this, and he asked for particulars of the male class or rooms used etc. These particulars were supplied. The Inspectors of the Education Department have also visited the school during these months and have given favourable reprts."

Attention of the Education Department is invited to these statements; and the Department is requested to supply the full facts regarding the school conducted by Mr. Salvi and the relations of Government with that school as disclosed in the measures taken by the Department. This information is necessary in order to decide whether Government has by its conduct acquiesced in the re-opening of the school, and thus waived the forfeiture.

Sd/- P.B.LAD.
25/11.

Remembrancer of Legal Affairs.

U.R. to Education and Industries Department, No.11861, dated the 25th November 1947.

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Re. Bunter Bernard Memorial School.

In his opinion No.4772, dated the 9th May 1947, the Officiating Solicitor to Government opined:

> " As the School was closed down for a period of nearly two years, Mr.Bunter has presumably failed to manage and conduct the said School in all respects in accordance with the rules and regulations for the time being in force of the Educational Department in Bombay within the meaning of condition 4 of the Trust Deed, and if my presumption is correct, the subsequent re-opening of the School by Mr.Bunter will not take away the right of the Government to enter upon the said School premises and take possession thereof (occasioned by reason of the breach of condition 4 of the ~~Said~~ Trust Deed) unless Mr. Bunter is in a position to show that Government has condoned the breach or waived the right."

The Hon'ble Prime Minister desires to have R.L.A's opinion on the question whether Government are entitled to demand possession of the School under the terms of the Trust Deed.

The Trust Deed executed between Bar Chandrabhagbai P.Bunter, Superintendent, the Bunter and Bernard's Primary and Anglo-Vernacular School at Hadapsar(hereinafter referred to as "the Manager" of the one part) and the Secretary of State for India in Council on 31st October 1933, provides that the Manager has agreed by and between the parties hereto that the Secretary of State shall hold and stand possessed of the pieces or parcels of land described in the Schedule and all Buildings which now are erected or may hereafter be erected thereon and also all fittings and fixtures which now are or may for the time being be on the premises upon the trusts and to and for the intents and purposes following that is to say upon Trust to permit the Manager to enter upon the said premises for the purposes and on the conditions following, namely, that she or other the Manager or Managers for the time being shall satisfy the conditions mentioned therein and empowers the Secretary of State to enter upon and take possession of the said premises and all buildings, fitting and fixtures etc, in the event of default being made by the Manager in the performance of any of those conditions. Condition 3 provides that the Manager should use all the

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premises and buildings as and for the purposes of public school to be devoted wholly to education and in part to secular education. Condition No.4 requires the Manager to manage and conduct the said school in all respects in accordance with the rules and regulations for the time being in force of the Educational Department in Bombay. Reading these two conditions together it is apparent that all that the Manager was required to do was to use the premises and buildings for the purposes of a public school and to manage and conduct such school in accordance with the rules and regulations for the time being in force. Although at the time when the Trust Deed was executed a Primary Anglo-Vernacular School was conducted, which is apparent from the preamble of the Trust Deed, it appears that there is no conditions imposed on the Manager to conduct an Anglo-Vernacular School. Consequently the fact that there is no longer any Anglo-Vernacular School conducted in the premises and buildings would involve no contravention of any of the conditions of the Trust Deed.

It is undisputed that the School conducted by the Manager was closed down in April 1945 and until April 1947 there was no school in the premises and buildings. During this period no attempt was made by Government to enforce the forfeiture clause and take possession of the premises and buildings. In April 1947, one Mr.D.D.Salvi to whom the premises and buildings have been transferred by the last Manager has opened a School in the buildings, The school is now teaching 6 standards and the Director of Public Instruction has reported that there are as many as 116 pupils in the three Divisions of Std.I and that the school is likely to thrive in due course. It is clear that there is a public school at present in the premises and buildings and the fact that there is no Anglo-Vernacular School run in the buildings involves no contravention of any of the conditions of the Trust Deed. If follows, therefore, that there is at present no contravention of any of the conditions of the Trust Deed enabling Government to enforce its right of re-entry. The right of re-entry, which Government

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could have enforced in 1945-46 when there was no school in the buildings, would no longer be available now since by allowing a school to be opened thereafter Government would be deemed to have waived it. It appears, therefore, that Government would not be entitled to enforce the forfeiture clause and demand possession of the buildings unless and until the present school is closed.

Sd/- P.N.LAD,
7/2.

Remembrancer of Legal Affairs.

U.O. to E.& I.D.No.71-Confl. , dated the 9th February 1948.

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Private Secretary's Office.

At a meeting of the Trustees of the Sir Victor Sassoon Trust for Ex-Servicemen held on the 7th July 1948, a proposal was made by the Trustee nominated by the Sassoon Welfare Trust to place the funds of the Sir Victor Sassoon Trust for ex-servicemen on fixed deposit with the Chartered Bank of India, Ltd, at 1.3/4 per cent per annum simple interest, repayable on three months' notice.

2. Clause 2 of the Trust Deed of the Sir Victor Sassoon Trust for Ex-servicemen provides that the Trustees may invest" all ..... moneys which may come to their hands by virtue hereof in the purchase of such investments as are authorised by Section 20 of the Indian Trusts Act 11 of 1882 and by the Rules framed by the High Court of Judicature at Bombay there under as they may deem proper with full power to the Trustees to alter vary or transpose such investments from time to time in to or for other s of of a like or similar nature and may with the consent in writing of the said Sir Victor Sassoon or the Trustee nominated and appointed by the Trustees of the Sassoon Welfare Trust as hereinafter provided in clause 3A hereof invest the said moneys in any other securities or in investments whatsoever and may with the like consent alter vary or transpose such investments in to or for others."

3. I keep herewith a copy of the relevant extract from the minutes of the meeting which the Secretary of the Trust (Mr.Henderson) has now prepared and which has been approved by His Excellency. As desired by the Honourable the premier at the meeting, I am to request you to give your opinion whether the investment proposed in para.1 above will be covered by clause 2 of the Trust Deed reproduced in para2 above.

4. It is requested that the papers may kindly be treated as urgent and submitted to His Excellency through the Honourable Minister for Law and the Honourable the Premier.

Sd/-

Private Secretary to
H.E.the Governor.

U.O.R. Secy, L.D. No. PSG-2523, dated the 20th July 48.

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Legal Department.

The duty imposed by section 20 of the Trusts Act to invest the Trust-Funds in certain kinds of securities is subject to any directions contained in the instrument of trust. In view of the express provision of clause 2 of the Trust Deed the Trustees can go beyond the provisions of section 20 of Trusts Act with the consent of the trustee nominated by Sir Victor Sassoon.

Sd/- P.N.LAD,
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Secretary to Government.

D.No. 109 dt. 23-7-48

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Office of the R.L.A.

It appears that Mr.D.B.Dalal presented a cheque of Rs.5,000 to His Excellency Sir Frederick Sykes. In acknowledging the donation, the Private Secretary to the Governor wrote as follows:-

> " I am to refer to the cheque for Rs.5,000 which you so kindly gave Mr.Ewbank for presentation to His Excellency to be used to assist his Village Improvement Scheme. I am now to say that His Excellency has decided that the money should be used in the first place for one or possibly more shields to be given for competition between the Talukas of the Presidency in the matter of the best work achieved in furthering the Village Improvement Scheme.
>
> I am to say that His Excellency hopes that you will consider this a suitable object for the expenditure of your munificent gift."

The note made by the Private Secretary to the Governor dated the 8th November 1933 says that, in terms of this letter, Mr.Dalal agreed to the proposed use which H.E. intended to make of the sum given by him. The shield was got prepared and from the letters addressed to the Commissioners dated the 26th April 1935 it appears that H.E. finally decided that the challenge shields should be called Dalal Shields. The shield, as eventually designed, bears the inscription "Sir Frederick Sykes Village Improvement Challenge Shield..... Division Presented By Mr. D. B. Dalal." The D.R.D. Board has in its resolution dated the 28th March 1948 resolved that the Sir Frederick Sykes Village Improvement Challenge Shield should be called the Mahatma Gandhi Village Improvement Challenge Shield and has communicated its decision to Government for consideration and adoption if it did not involve any legal or technical difficulty. The Commissioners, C.D. and S.D. have accepted the proposal, while the Commissioner , N.D., has opposed it. The A.R.D.D. has referred the papers to R.L.A. for advice.

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2. From the history and correspondence described above, it would appear that the donation was not given by Mr.Dalal to commemorate the memory of Sir Frederick Sykes. The money was presented to H.E.the Governor and, with the agreement of the donor, it was decided to use the money for shields in connection with the village improvement scheme. It is not quite clear from the papers whether the scheme is itself called by the name of Sir Frederick Sykes. There is nothing in the papers to suggest that the donation was earmarked for shields bearing the name of Sir Frederick Sykes, and H.E. himself had proposed that the shield should be called by the name of Mr.Dalal. The effect of the correspondence is that the money was to be used for shields for competition between the Talukas in the matter of the best work achieved in furthering the village improvement scheme. So long as that use is continued, there would be no legal objection to changing the name of the shield. Even where the trust deed expressly specified a particular name for the charity, it was recently held by the Privy Council that a charity does not change its nature merely by a change of name.(46 Bom.LR.518 at p.521) In this case, since the donation was not given to perpetuate the memory of Sir Frederick Sykes and since there was no understanding that the shields should bear his name, there should be no objection to changing the name of the shield, provided the shield is to be given as a challenge shield for the best work in connection with the village scheme.

3. Whether it is expedient so to change the name is a matter of policy depending upon (1) the advisability of associating Mahatma Gandhi's name with such a small scheme and (2) the desirability of establishing a precedent of this kind.

Sd/- P.N.LAD,

Remembrancer of Legal Affairs.

U.R.to A.R.D.D. No. 10174, dated the 29th October 1948.

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N.V.V. dt.18/5.